IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12371 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAMAN ALIAS BHADRSH NARSINH BHAI PATEL

Versus

COMMISSIONER OF POLICE FOR THE CITY OF SURAT

Appearance:

1. Special Civil Application No. 12371 of 2002

MS KRISHNA U MISHRA for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/01/2003

ORAL JUDGEMENT

#. By way of this petition, the detenu has challenged his detention order dated 23.5.2002. By the impugned

order, the detenu is detained by the Police Commissioner, Surat City, under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of dangerous activities.

#. Along with the detention order, the detenu also served with the grounds of detention. In the said grounds, there is a reference of two criminal cases, which are registered at Varachha Police Station, being CR.No.5320 of 2002 and CR No.5324 of 2002 under sections 66(1)(B) and 65-E of the Bombay Prohibition Act. It is mentioned in the detention order that the petitioner is illegally doing activities of transporting and selling country made liquor, for which the aforestated two criminal cases have been registered against him. Along with the detention order, certain statements of witnesses were also supplied, who have stated about high-handed and illegal activities of the petitioner regarding beating the people with dangerous weapons etc. On the aforesaid grounds, the petitioner is detained by way of preventive detention.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that, so far as criminal case, being CR No.5320 of 2002 is concerned, the petitioner is already released on bail and so far as second criminal case, being CR No.5324 of 2002 is concerned, the petitioner is still in judicial custody and that even the petitioner has never applied for bail in connection with the aforesaid criminal case. However, the detaining authority has mentioned in the detention order that the petitioner is likely to be released on bail at any time, and, therefore, it was necessary to detain the petitioner by way of preventive detention. Therefore, the detaining authority has merely stated that the petitioner is likely to be released on bail when there is no material in that connection. It is submitted that, the detaining authority, at least, was required to mention in the order about his satisfaction as to how the petitioner is likely to be released on bail. For that purpose, learned advocate has relied upon the decision of the Apex Court in the case of Amritlal and other Vs. Union Government, reported in AIR 2000 SC 3675, wherein the Apex Court in paras 4, 6 and 7 observed as under.:

" ....

4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 CriLJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

xxxx xxxx xxxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is `likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the `likelihood of his moving an application for bail' which is different from `likelihood to be released on bail'. This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention

order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

xxxx xxx xxxx"

#. It is, no doubt, true that the detaining authority has not stated as to on what material, it has come to the conclusion that the petitioner is likely to be released on bail in connection with the aforestated criminal case, for which, the petitioner is in judicial custody. Learned advocate has submitted that, even the petitioner has not applied for bail in connection with the aforestated criminal case and that normally, if the accused is found to have been indulged in more than one case, the bail orders are not likely to be passed so easily unless there is some cogent material to grant the bail to the accused. In the instant case, even the application for bail is not filed.

#. Considering the fact that the detaining authority has merely mentioned that the petitioner is likely to be released on bail without discussing anything further in this behalf and in view of the aforestated judgment of the Apex Court, the order of detention is required to be quashed and set aside.

#. In view of what is stated above, the petition is allowed. The order of detention dated 23.5.2002 is quashed and set aside. The detenu Vaman @ Bhadresh Narsinhbhai Patel is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)